

BEFORE THE BOARD OF ENVIRONMENTAL REVIEW
OF THE STATE OF MONTANA

In the matter of the amendment)	NOTICE OF PUBLIC HEARING ON
of ARM 17.50.401, 17.50.402,)	PROPOSED AMENDMENT
17.50.403, 17.50.410,)	
17.50.411, 17.50.412 and)	
17.50.416 pertaining to solid)	(SOLID WASTE)
waste fees)	

TO: All Concerned Persons

1. On September 16, 2003, at 10:00 a.m., the Board of Environmental Review will hold a public hearing in Room 111 of the Metcalf Building, 1520 East Sixth Avenue, Helena, Montana, to consider the proposed amendment of the above-stated rules.

2. The Board will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing or need an alternative accessible format of this notice. If you require an accommodation, contact the Board no later than 5:00 p.m., September 8, 2003, to advise us of the nature of the accommodation that you need. Please contact the Board Secretary at P.O. Box 200901, Helena, Montana 59620-0901; phone (406) 444-2544; fax (406) 444-4386; or email ber@state.mt.us.

3. The rules proposed to be amended provide as follows, stricken matter interlined, new matter underlined:

17.50.401 PURPOSE (1) The purpose of this subchapter is to establish solid waste management system licensing requirements and fee schedules provided for in 75-10-115, and ~~75-10-204~~ 75-10-221, MCA.

AUTH: 75-10-115, ~~75-10-204~~ 75-10-221, MCA
IMP: 75-10-115, ~~75-10-204~~ 75-10-221, MCA

REASON: The 2001 Legislature (Section 8, Chapter 170, Laws of 2001) eliminated the reference to annual renewal and license application fees in 75-10-204, MCA, and added a reference to fees in 75-10-221, MCA, and the proposed change reflects that action.

17.50.402 AUTHORITY (1) Authority for rules promulgated in this subchapter is provided for in 75-10-104, 75-10-105, 75-10-115, ~~75-10-204~~, and 75-10-221, MCA, under which the ~~department board~~ may establish and the department may collect fees for the management and regulation of solid waste disposal. These fees may include:

(a) remains the same.

(b) ~~An~~ A flat annual license renewal fee that reflects a minimal base fee related to the fixed costs of an annual inspection and license renewal based upon the categorization of

solid waste management facilities into separate classes identified by the following formula criteria:

~~(i) for a major facility with a planned capacity of more than 25,000 tons of solid waste a year, \$3,500;~~

~~(ii) for an intermediate facility with a planned capacity of more than 5,000 tons of solid waste a year but not more than 25,000 tons a year, \$3,000;~~

~~(iii) for a minor facility with a planned capacity of not more than 5,000 tons a year, \$2,500; and~~

(i) the quantity of solid waste received by the solid waste management facility;

(ii) the nature of the solid waste received;

(iii) the nature of the waste management occurring within the solid waste management system; and

(c) A ~~volume~~ tonnage-based fee on solid waste disposal.

AUTH: 75-10-115, 75-10-204, 75-10-221, MCA

IMP: 75-10-115, 75-10-204, 75-10-221, MCA

REASON: The 2001 Legislature (Sections 4 and 5, Chapter 170, Laws of 2001) amended 75-10-204 and 75-10-221, MCA, so that the Board of Environmental Review establishes solid waste fees by rule and the Department collects them. The proposed amendment reflects the current Board and Department roles as set by law.

17.50.403 DEFINITIONS Unless the context requires otherwise, in this subchapter the following definitions apply:

(1) "Barn waste" means the bedding, waste feed, manure and other animal excretions generated from the operation of a barn or feedlot.

(1) and (2) remain the same, but are renumbered (2) and (3).

(4) "Commercial waste" means waste generated from stores, offices, restaurants, food processing facilities, warehouses, and other non-manufacturing activities, and non-processing wastes such as office and packing waste generated at industrial facilities.

(3) remains the same, but is renumbered (5).

~~(4) "Container site" means a facility for the collection of solid waste generated by more than one household or firm, generally open to the public, in refuse container(s) with a total site capacity of more than 10 cubic yards.~~

(6) "Contaminated soil" means soil, rocks, dirt, or earth that has been made impure by contact, commingling, or consolidation with organic compounds such as petroleum hydrocarbons. The term does not include soils contaminated solely by inorganic metals or soils that meet the definition of hazardous waste under ARM 17.54.201.

(5) through (7)(c) remain the same, but are renumbered (7) through (9)(c).

(10) "Farm waste" means waste from farms that is not household waste, hazardous waste, or barn waste. It includes,

but is not limited to, cull potatoes and spoiled crops such as hay or grain.

(8) and (9) remain the same, but are renumbered (11) and (12).

(13) "Interim closure" means the period of time from the final receipt of waste at a solid waste management facility until the department approves closure under ARM 17.50.530.

(14) "Intermediate Class II facility" means a Class II facility with a planned capacity of more than 5,000 tons per year but not more than 25,000 tons per year.

(15) "Intermediate incinerator" means an incinerator facility with a planned capacity of more than 5,000 tons per year but not more than 25,000 tons per year.

(16) "Intermediate landfarm facility" means a landfarm facility that has more than 1,600 cubic yards but less than 8,000 cubic yards of contaminated soil, from single or multiple events, undergoing treatment and accepted for treatment at the facility at any time during a calendar year.

(17) "Landfarm facility" means a solid waste management system engaged in the controlled remediation through landfarm treatment technologies of non-hazardous contaminated soil that is not subject to regulation under the underground storage tank/leaking underground storage tank statutes and rules found in Title 75, chapter 11, MCA, and ARM Title 17, chapter 56.

(18) "Large composter operation" means a composting operation that does not meet the definition of small composter operation. Co-composters and facilities that accept sewage sludge for composting are large composter operations.

(19) "Major Class II facility" means a Class II facility with a planned capacity of more than 25,000 tons per year.

(20) "Major Class III facility" means a Class III facility that disposes of 1,000 tons or more of material per year.

(21) "Major Class IV facility" means a Class IV facility with a planned capacity of 1,000 tons or more per year.

(22) "Major incinerator" means an incinerator facility with a planned capacity of more than 25,000 tons per year.

(23) "Major landfarm facility" means a landfarm facility that has 8,000 cubic yards or more of contaminated soil, from single or multiple events, undergoing treatment and accepted for treatment at the facility at any time during a calendar year.

(24) "Minor Class II facility" means a Class II facility with a planned capacity of not more than 5,000 tons per year.

(25) "Minor Class III facility" means a Class III facility that disposes of less than 1,000 tons of material per year.

(26) "Minor Class IV facility" means a Class IV facility of less than 1,000 tons per year.

(27) "Minor incinerator" means an incinerator facility with a planned capacity of not more than 5,000 tons per year.

(28) "Minor landfarm facility" means a landfarm facility that has up to 1,600 cubic yards of contaminated soil from single or multiple events either undergoing treatment or accepted for treatment at the facility.

(10) and (11) remain the same, but are renumbered (29) and (30).

(31) "One-time household hazardous waste collection event" means a collection of household hazardous waste from the public on a one-time basis.

(32) "One-time landfarm" means a landfarm facility for remediation of less than 1,600 cubic yards of non-hazardous contaminated soil generated from a single event, regardless of the source.

(12) through (15) remain the same, but are renumbered (33) through (36).

(37) "Recycling facility" means a facility, generally open to the public, that handles only source-separated or presorted material for the purpose of recycling either in bulk or in container(s) with a total site capacity of more than 40 cubic yards.

(38) "Remediate" means to treat contaminated soil to the point that it no longer poses a threat to human health or the environment.

(16) through (20) remain the same, but are renumbered (39) through (43).

(44) "Small composter operation" means a composting operation that:

(a) has less than two acres of active working area;

(b) accepts less than 10,000 cubic yards annually; and

(c) produces less than 1,000 tons of compost annually; and

either:

(i) accepts primarily yard waste, with a maximum of 25% barn or farm waste, by weight; or

(ii) accepts primarily farm or barn waste generated on-site.

(21) through (30) remain the same, but are renumbered (45) through (54).

AUTH: 75-10-115, 75-10-204, 75-10-221, MCA

IMP: 75-10-115, 75-10-221, MCA

REASON: The proposed additions to the definitions are the result of the general rule reorganization and the need to define and regulate waste management practices that were not recognized when the original rule was written ten years ago. "Landfarm facility," "intermediate landfarm facility," "major landfarm facility," "minor landfarm facility," "one-time landfarm," "one-time household hazardous waste collection event," and "recycling facility" are new types of facilities not defined in the current fee rules. Definitions of "large composter operation," "major Class III facility," "minor Class III facility," and "small composter operation" are currently found in ARM 17.50.412. They are proposed for inclusion in the definitions rule, ARM 17.50.403, for clarity and consistency. Because they would be defined in ARM 17.50.403, they are being proposed for deletion from ARM 17.50.412. Definitions of "barn waste," "commercial waste," "contaminated soil," "farm waste," and "remediate" are necessary because they are used to define other terms in these

rules. It is necessary to define "interim closure" because it is used in ARM 17.50.410 for holding fees in abeyance while a facility completes closure as required under ARM 17.50.530. "Container site" is defined by statute in 75-10-103(2), MCA. The definition in the current rule conflicts with the statutory definition and is proposed for deletion.

"Major Class II facility," "major incinerator," "intermediate Class II facility," "intermediate incinerator," "minor Class II facility," and "minor incinerator" were previously determined based on language proposed for deletion in ARM 17.50.402(1)(b). They are proposed for inclusion instead in the definitions found in ARM 17.50.403 for clarity and consistency. "Major Class IV landfill" and "minor Class IV landfill" are currently defined in ARM 17.50.412(7) and assessed the same fees as Class III landfills in Tables 1, 2, and 3. This language is proposed for deletion and the fees for Class IV landfill facilities are specifically listed in new Tables 1, 2, and 3. The terms "major Class IV facility" and "minor Class IV facility" are proposed for inclusion in ARM 17.50.403 instead of the terms "major Class IV landfill" and "minor Class IV landfill" for clarity and consistency.

17.50.410 ANNUAL OPERATING LICENSE REQUIRED (1) Except as provided in 75-10-214, MCA, no person may dispose of solid waste or operate or maintain a solid waste management system after July 1, 1991, without an operating license from the department. The license period ~~shall be for a base year from~~ is July 1 of one year through June 30 of the subsequent year.

(a) When an applicant for a license to operate a solid waste management system submits to the department the license application required by ARM 17.50.508, the department will determine the applicable fee specified in Table 3 and send an invoice to the applicant within seven working days after receipt of the application. The department shall begin processing the application upon receipt of the invoiced amount.

~~(a) (b)~~ All license holders A licensee shall file an annual report with the department by April 1 of each year. The report ~~shall must~~ be filed on a form ~~available from~~ provided by the department.

~~(b) (c)~~ The department shall mail invoices for license renewal fees to license holders licensees by June 15 of each year. The department shall calculate and assess license ~~License~~ renewal fees will be calculated in accordance with Table 1, "Annual License Solid Waste Fees Schedule." Any A solid waste management facility that does not fit into one of the categories listed in Table 1 ~~shall must~~ be assessed fees no greater than major Class II landfill facilities. ~~Payment of renewal fees A~~ licensee shall pay the assessed fee by July 31 of each year, but may be submitted submit the fees to the department quarterly, with the first payment due on or before July 31 of each base year, and subsequent quarterly payments due on October 31, January 31, and April 30. Failure to submit payments when due shall subject subjects the license holder licensee to the provisions of 75-10-116, MCA.

~~(c)~~ (d) The ~~annual license solid waste~~ fee specified in Table 1 ~~will be~~ is pro-rated by quarter for the year in which a license is originally issued.

(2) The department ~~will~~ shall mail renewal application forms to ~~renewal applicants~~ licensees by February 1 of each year. Application for renewal of a solid waste management system license ~~shall~~ must be submitted to the department by April 1 of each year. ~~Applicants~~ Licensees who are required to apply for license renewal and to pay fees under this subchapter, and who failing to submit the ~~relicensing application~~ and appropriate fees within the specified time ~~shall be~~ are subject to the provisions of 75-10-116, MCA.

(3) through (5) remain the same.

(6) The department shall license the following free of charge:

(a) persons conducting one-time household hazardous waste collection events;

(b) small composter operations; and

(c) recycling facilities that accept waste from more than one source.

(7) Fees at a facility in interim closure must be held in abeyance by the department. Fees held in abeyance are due and payable to the department if the facility does not complete closure in the time specified in ARM Title 17, chapter 50, subchapter 5.

~~TABLE 1. ANNUAL LICENSE FEE SCHEDULE~~

<u>FACILITY</u>	<u>ANNUAL LICENSE FEE</u>	<u>DISPOSAL FEE/TON</u>
Major Class II Landfill	\$3,500	\$0.31
Intermediate Class II Landfill	3,000	0.31
Minor Class II Landfill	2,500	0.31
Major Class III Landfill	1,000	
Minor Class III Landfill	500	
Major Incinerator	3,500	0.31
Intermediate Incinerator	3,000	0.31
Minor Incinerator	2,500	0.31
Container System (Initial Site)	360	
Each Additional Container Site	50	
Transfer Station (>10,000 tons/yr)	1,050	
Transfer Station (<10,000 tons/yr)	400	
Large Composter Operation	1,500	

~~TABLE 2. LICENSE TRANSFER FEE~~

<u>FACILITY</u>	<u>TRANSFER FEE</u>
Major Class II Landfill	\$500
Intermediate Class II Landfill	400
Minor Class II Landfill	300
Major Class III Landfill	200
Minor Class III Landfill	150
Major Incinerator	500
Intermediate Incinerator	400
Minor Incinerator	300

Container System (Initial Site)	100
Each Additional Container Site	40
Transfer Station (>10,000 tons/yr)	400
Transfer Station (<10,000 tons/yr)	250
Large Composter Operation	400

~~TABLE 3. APPLICATION REVIEW FEE SCHEDULE~~

<u>FACILITY</u>	<u>APPLICATION REVIEW FEE</u>
Major Class II Landfill	\$10,000
Intermediate Class II Landfill	7,500
Minor Class II Landfill	5,000
Major Class III Landfill	3,000
Minor Class III Landfill	2,000
Major Incinerator	10,000
Intermediate Incinerator	7,500
Minor Incinerator	5,000
Container System (Initial Site)	1,000
Each Additional Container Site	100
Transfer Station (>10,000 tons/yr)	7,000
Transfer Station (<10,000 tons/yr)	4,000
Large Composter Operation	3,000
Other Class II Materials	5,000

TABLE 1. SOLID WASTE FEES

<u>FACILITY</u>	<u>ANNUAL LICENSE FEE</u>	<u>DISPOSAL FEE/TON</u>
Major Class II facility	\$4,200	\$0.40
Intermediate Class II facility	\$3,600	\$0.40
Minor Class II facility	\$3,000	\$0.40
Major Class III facility	\$1,200	\$0.40
Minor Class III facility	\$ 600	\$0.40
Major Class IV facility	\$1,200	\$0.40
Minor Class IV facility	\$ 600	\$0.40
Major incinerator	\$4,200	\$0.40
Intermediate incinerator	\$3,600	\$0.40
Minor incinerator	\$3,000	\$0.40
Major landfarm facility	\$1,800	\$0.40
Intermediate landfarm facility	\$1,200	\$0.40
Minor landfarm facility	\$ 600	\$0.40
One-time landfarm	\$ 0	\$0.00
Transfer station (≥10,000 tons/yr)	\$1,260	\$0.00
Transfer station (<10,000 tons/yr)	\$ 480	\$0.00
Large composter operation	\$1,800	\$0.00
Small composter operation	\$ 0	\$0.00

TABLE 2. LICENSE TRANSFER FEE

<u>FACILITY</u>	<u>TRANSFER FEE</u>
Major Class II facility	\$600
Intermediate Class II facility	\$480
Minor Class II facility	\$360
Major Class III facility	\$240
Minor Class III facility	\$180

<u>Major Class IV facility</u>	<u>\$240</u>
<u>Minor Class IV facility</u>	<u>\$180</u>
<u>Major incinerator</u>	<u>\$600</u>
<u>Intermediate incinerator</u>	<u>\$480</u>
<u>Minor incinerator</u>	<u>\$360</u>
<u>Major landfarm facility</u>	<u>\$600</u>
<u>Intermediate landfarm facility</u>	<u>\$480</u>
<u>Minor landfarm facility</u>	<u>\$360</u>
<u>One-time landfarm</u>	<u>\$ 0</u>
<u>Transfer station (≥10,000 tons/yr)</u>	<u>\$480</u>
<u>Transfer station (<10,000 tons/yr)</u>	<u>\$300</u>
<u>Large composter operation</u>	<u>\$480</u>
<u>Small composter operation</u>	<u>\$ 0</u>

TABLE 3. APPLICATION REVIEW FEE SCHEDULE

<u>FACILITY</u>	<u>REVIEW FEE</u>
<u>Major Class II facility</u>	<u>\$12,000</u>
<u>Intermediate Class II facility</u>	<u>\$ 9,000</u>
<u>Minor Class II facility</u>	<u>\$ 6,000</u>
<u>Major Class III facility</u>	<u>\$ 3,600</u>
<u>Minor Class III facility</u>	<u>\$ 2,400</u>
<u>Major Class IV facility</u>	<u>\$ 3,600</u>
<u>Minor Class IV facility</u>	<u>\$ 2,400</u>
<u>Major incinerator</u>	<u>\$12,000</u>
<u>Intermediate incinerator</u>	<u>\$ 9,000</u>
<u>Minor incinerator</u>	<u>\$ 600</u>
<u>Major landfarm facility</u>	<u>\$ 3,600</u>
<u>Intermediate landfarm facility</u>	<u>\$ 2,400</u>
<u>Minor landfarm facility</u>	<u>\$ 1,200</u>
<u>One-time landfarm (≥800 cubic yds)</u>	<u>\$ 200</u>
<u>One-time landfarm (<800 cubic yds)</u>	<u>\$ 500</u>
<u>Transfer station (≥10,000 tons/yr)</u>	<u>\$ 8,400</u>
<u>Transfer station (<10,000 tons/yr)</u>	<u>\$ 4,800</u>
<u>Large composter operation</u>	<u>\$ 3,600</u>
<u>Small composter operation</u>	<u>\$ 0</u>

AUTH: 75-10-115, 75-10-204, 75-10-221, MCA

IMP: 75-10-115, 75-10-204, 75-10-221, MCA

REASON: The proposed new ARM 17.50.410(1)(a) reflects the change in Department and state accounting practices. It would require an applicant for a new solid waste management system license to submit the application to the Department and the Department would then invoice the applicant within seven working days for the application fee established in Table 3. The Department would then begin processing the application upon receipt of the invoiced amount. The current rule, which contains a Table 3 that sets out application fees, does not explicitly require an applicant to pay the fee set out in the table or state when the fee is due. The proposed amendment is necessary to explicitly require the application fee from Table 3, and to require that the fee be paid upon invoice by the Department in order for the Department to begin processing the

application. The proposed amendments to ARM 17.50.410(1)(a) [renumbered (b)] reflect the current Department practice of mailing an annual renewal form to each licensee. Proposed amendments to ARM 17.50.401(1)(b) specify that annual fees are due on July 31, but that quarterly fees are due July 31, October 31, January 31 and April 31 if the licensee elects to pay quarterly.

Proposed amendments to ARM 17.50.410(2) specify that the Department will mail out renewal forms to current licensees by February 1 so licensees have sufficient time to complete them by the April 1st deadline. The Board is proposing to amend "renewal applicant" to "licensees" to more accurately state to whom the Department is required to send renewal applications. The current rule states that failure to submit a renewal application and appropriate fees subjects an applicant to criminal prosecution under 75-10-116, MCA. Because that statute provides criminal sanctions only for failure to pay fees, the Department is proposing to eliminate the reference to "licensing application" in the rule.

New ARM 17.50.410(6) is proposed to formalize current Department practices. By policy, one-time household hazardous waste collection events and small composters are required to be registered with the Department. According to 75-10-221, MCA, each solid waste management system must have a license from the Department. It is proposed that recycling facilities, one-time household hazardous waste collection events and small composters receive a license without charge because they are waste reduction activities with minor environmental impact. Insubstantial time and cost are required to process and evaluate the applications. The licensing of these systems would provide the Department with information on their location and better enable the Department to provide this information to the public.

One-time landfarms are currently required by policy to register with, but pay no fees to, the Department. These facilities require considerable staff time to examine analytical results and conduct inspections. The proposed fee would cover Department costs associated with this type of facility. Section 75-10-115, MCA, requires that fees must be adopted by the Board of Environmental Review. Fees for other landfarms are currently set in guidance issued in accordance with the requirements of ARM 17.50.410(1)(c).

The proposed new ARM 17.50.410(7), holding fees in abeyance during closure activities, reflects the requirement of the closure rules in ARM 17.50.530(1)(h)(ii).

The proposed fee tables increase the fees assessed to solid waste management systems to cover the costs of regulating and licensing solid waste management systems. Solid waste management systems currently regulated and licensed by the Department include landfills, transfer stations, resource recovery facilities, petroleum impacted soil treatment facilities or landfarms, municipal solid waste (MSW) incinerators, infectious or medical waste treatment facilities, and composting facilities. The Solid Waste Program (SWP) currently collects fees set by statute for application review,

license transfer, and the annual renewal of solid waste management system licenses. A tonnage fee is also collected from Class II (MSW) landfills and Class IV construction and demolition (C&D) waste landfills for each ton of waste disposed of at those facilities. Class III landfills and other inert waste facilities and soil treatment facilities are not currently assessed a tonnage fee. Class III landfills and major, intermediate, and minor soil treatment facilities would be charged tonnage fees under the proposed fee tables. A limited number of Class II landfills are currently assessed an additional fee for each ton of out-of-state wastes disposed of in those facilities. Out-of-state waste generators do not pay into the general funds of Montana and the additional \$.27 per ton fee is to compensate for the general fund revenue that the Department receives to operate the solid waste management programs. This practice would continue under the proposed amendments, as no changes are proposed to ARM 17.50.411(3).

The SWP activities are primarily funded by the revenue generated by fees charged to solid waste management system license holders. These activities include the issuing of licenses, monitoring, inspections, and compliance assistance and enforcement at licensed and unlicensed solid waste management systems. The fees fund 11 full time employees (FTEs) in the Solid Waste Licensing and Regulatory programs, the Pollution Prevention Program and the Department's Legal Unit. The fees have not been changed since they were established in 1991, while Department costs to license and regulate these facilities have risen with inflation.

The proposed fees assessed on each solid waste management system would be based on the type of waste collected, the waste handling process and volume/tonnage of waste treated, stored, or disposed of, as required by 75-10-115, MCA. Licensed solid waste management systems are currently assessed a license renewal fee by June 30 of each year, at the end of the state fiscal year. The fees assessed at the end of the fiscal year reflect the operation of the facility for the previous calendar year. The fees are subsequently remitted to the Department on a quarterly payment schedule during the new fiscal year. This process would not change, but is proposed to be made more specific by the amendments proposed to ARM 17.50.410(1)(c), as previously explained.

The combined effect of the proposed fee increases in Tables 1, 2 and 3 would bring in an estimated additional \$165,046 to the solid waste management account. The fees would be paid by the 116 licensed solid waste management facilities in Montana. Since these facilities bill their customers either directly or through tax assessment, the fee increase would be passed on to virtually everyone in the state and an unknown number of out-of-state persons who dispose of refuse in Montana. The exact number of persons affected is unknown, but would include all of the estimated 909,453 residents of Montana. (2002 census estimate) This would amount to approximately \$0.18 per citizen per year.

TABLE 1 FEE INCREASES

The proposed fees would increase the base fee for each class of facility by 20% and the tonnage fee by 29%. In addition, the Board is proposing a \$0.40 tonnage fee on Class III facilities and landfarm facilities that have not previously been assessed any tonnage fee.

There are 10 major Class II facilities in Montana with a disposal tonnage of 818,833 tons (FY 2001). The cumulative amount of the proposed fee increase for this class of facility is estimated to be \$7,000 for the base fee and \$73,695 for the tonnage fee.

There are 14 intermediate Class II facilities in Montana with a disposal tonnage of 183,211 tons (FY 2001). The cumulative amount of the proposed fee increase for this class of facility is \$8,400 for the base fee and \$16,489 for the tonnage fee.

There are seven minor Class II facilities in Montana with a disposal tonnage of 17,156 tons (FY 2001). The cumulative amount of the proposed fee increase for this class of facility is \$3,500 for the base fee and \$1,544 for the tonnage fee.

There are 12 major Class III facilities in Montana with a disposal tonnage of 27,918 tons (FY 2001). The cumulative amount of the proposed fee increase for this class of facility is \$2,400 for the base fee and \$11,167 for the tonnage fee.

There are 38 minor Class III facilities in Montana with a disposal tonnage of 12,542 tons (FY 2001). The cumulative amount of the proposed fee increase for this class of facility is \$3,800 for the base fee and \$5,017 for the tonnage fee.

There are two minor Class IV facilities in Montana with a disposal tonnage of 2,763 tons (FY 2001). The cumulative amount of the proposed fee increase for this class of facility is \$200 for the base fee and \$249 for the tonnage fee.

There is currently only one incinerator in Montana. It is a major incinerator with a disposal tonnage of 12,997 tons (FY 2001). The cumulative amount of the proposed fee increase for this class of facility is \$700 for the base fee and \$1,170 for the tonnage fee.

There are no major landfarm facilities in Montana at the current time.

There are two intermediate landfarm facilities. The cumulative amount of the proposed fee increase for this class of facility is \$400 for the base fee and approximately \$1,472 for the tonnage fee.

There are four minor landfarm facilities in Montana with a disposal tonnage of 813 tons (FY 2001). The cumulative amount of the proposed fee is \$400 for the base fee and \$325 for the tonnage fee.

There are three small transfer stations in Montana with a disposal tonnage of less than 10,000 tons (FY 2001). The cumulative amount of the proposed fee increase for this class of facility is \$240 for the base fee.

There are six large transfer stations in Montana. The cumulative amount of the proposed fee increase for this class of facility is \$1,260 for the base fee.

There are four large composter operations in Montana. The cumulative amount of the proposed fee increase for this class of facility is \$1,200 for the base fee.

TABLE 2 FEE INCREASES

The exact dollar amount and the number of persons involved with the increases in license transfer fees is unknown and varies greatly from year to year, but is estimated at less than one facility per year. The fees increase approximately 20% for each category. It also varies greatly as to which type of facility will request a license transfer. Over the past 12 years there have been requests from two major Class II facilities and three major Class III facilities and one large transfer station. At this rate the increase in fees would generate an approximate additional \$34 annually.

TABLE 3 FEE INCREASES

The exact dollar amount and the number of persons involved with the increases in application review fees is unknown and varies greatly from year to year. The fees increase approximately 20% for each category. They also vary greatly as to which type of facility will request a license. Last year there were four applications for various types of facilities that generated \$9,000 in fees. At this rate, the increase in fees would generate an approximate additional \$1,800 annually. New fees are being imposed on one-time landfarms. Small (less than 800 cubic yards) one-time landfarms would be assessed an application fee of \$200 and large one-time landfarms would be assessed an application fee of \$500. It is estimated that there will be five new small one-time landfarms and two new large one-time landfarms annually based on past history. This would generate \$1,000 in fees from small landfarms and \$1,000 from large landfarms.

17.50.411 VOLUME-BASED DISPOSAL FEE (1) Except as provided for in 75-10-214, MCA, and in fee Tables 1, 2 and 3 of ARM 17.50.410, any person licensed to dispose of or incinerate solid waste shall submit to the department an annual fee of ~~\$0.31~~ 0.40 per ton of solid waste incinerated or disposed of at the licensed facility during the previous calendar year. This ~~volume-based fee shall~~ must be submitted to the department in addition to the flat annual license renewal fees and is subject to the ~~same schedule as the license fees in Table 1 of ARM 17.50.410.~~

(2)(a) ~~The volume-based department shall calculate the fee will be calculated by using one of the following methods:~~

~~(i) (a) actual weight of waste managed as reported in the annual report required by ARM 17.50.410; or~~

~~(ii) (b) estimated weight based upon the volume of waste managed as reported in the annual report required by ARM 17.50.410.;~~

~~(iii) estimated weight based upon service area population;~~
~~or~~

~~(iv) special situations (e.g. 2 or more landfills servicing the same area and population, incinerator ash disposed of in a landfill, acceptance of out of district wastes, acceptance of special wastes, etc.).~~

~~(b) (3) For the purpose of estimating weight based upon the volume of waste managed, the following formulas apply:~~

~~(i) (a) one cubic yard of loose refuse (residential or commercial) shall equals 300 pounds; and~~

~~(ii) (b) one cubic yard of compacted refuse (e.g. packer truck) received at the facility shall equals 700 pounds.~~

~~(c) For solid waste management systems that choose not to weigh or measure the volume of waste managed, the following formulas shall be used for the purpose of estimating weight based upon service area population:~~

POPULATION	TONS PER YEAR
Greater than 5,000	1.04
1,000 — 5,000	0.59
Less than 1,000 and unincorporated areas	0.41

~~(c) The average tire weighs 20 pounds.~~

~~(3) (4) In addition to the volume tonnage-based fee specified in (1) of this rule, any person licensed to dispose of or incinerate solid waste shall submit to the department a quarterly fee of \$0.27 per ton of solid waste generated outside Montana and disposed of or incinerated within Montana. All facilities that accept wastes from outside Montana for the purpose of incineration or disposal must weigh the wastes accepted at that facility to accurately determine the volume accepted.~~

~~(4) remains the same, but is renumbered (5).~~

AUTH: 75-10-115, 75-10-204, 75-10-221, MCA

IMP: 75-10-115, 75-10-118, 75-10-221, MCA

REASON: The changes proposed to this rule reflect the changes made by the 2001 Legislature at Sections 2-5, Chapter 170, Laws of 2001. Prior law allowed solid waste management facilities to estimate weight based on population, while the current law requires that fees be based on quantities of waste and the nature of the wastes received at the facility. Waste tire facilities manage wastes on a per-tire basis, rather than weight or volume, but their classification for fee purposes is based on tonnage. The volume-to-tonnage conversion factor for estimating solid waste was included in the statement of intent in 1991 Senate Bill 209, Chapter 643, Laws of 1991 and was based on testimony given to the legislature. The Department has no studies to indicate that the conversion factors are incorrect. This enables smaller communities to avoid the cost of installing

scales. The determination that an average tire weighs 20 pounds is based on national averages and uses the same figure as currently used in ARM 17.50.412(5)(a), which is proposed for deletion. The type and number of facilities affected and the cumulative amount of the proposed disposal fee increase were addressed in the reason for the proposed amendment to ARM 17.50.410.

17.50.412 ANNUAL REPORTING; COMPOSTING; SPECIAL WASTES CONSOLIDATED OPERATIONS; LICENSE CLASSIFICATIONS (1) Any person owning or operating ~~facilities~~ a facility that ~~dispose of~~ manages solid waste through ~~landfilling or incineration~~ shall submit to the department by April 1 of each year, on a form provided by the department, the following information:

(a) through (b)(ii) remain the same.

(c) ~~Facilities that do not operate scales and that do not measure the volume of waste received and disposed of shall estimate the total tonnage of waste received and disposed of in the manner provided in ARM 17.50.411(2)(c). For a landfarm facility, a report summarizing the total volume in cubic yards of contaminated soils accepted for treatment and under treatment during the previous year as demonstrated by compilation of waste acceptance forms, bills of lading, or trip tickets;~~

(d) For a large or small composter facility, a report summarizing:

(i) the kinds of materials accepted;

(ii) the total volume in cubic yards of material accepted;
and

(iii) the tons of compost produced.

(e) For facilities licensed primarily for the storage, treatment, processing, or disposal of waste tires, the kind and number of tires received by the facility and the number of tires processed, treated, disposed of, or removed from the facility during the previous year.

~~(2) All large composter operations must be licensed by the department. For the purposes of licensing fees the following definitions apply:~~

~~(a) A small composter operation must meet all the following criteria:~~

~~(i) under 2 acres active working area;~~

~~(ii) the operation must accept yard waste only;~~

~~(iii) the operation must accept less than 10,000 cubic yards annually; and~~

~~(iv) less than 1000 tons annual production.~~

~~(b) Large composter operations include all composter operations which do not meet the above criteria and specifically include the following:~~

~~(i) co-composters; and~~

~~(ii) any facility that accepts sewage sludge for composting.~~

~~(3) Small composter operations which accept waste from more than one source are required to register with the department on a form provided by the department. Small composter operations which accept waste from more than one~~

~~source are not required to be licensed, but may be inspected by the department and must be conducted in accordance with guidelines issued by the department.~~

~~(4) Any person owning or operating a licensed facility that disposes of Group II solid wastes through landfilling will not be charged additional fees for composting operations conducted on the same site as the licensed facility. Composting operations must be included in the facility's approved plan of operation.~~

~~(5) The storage, treatment, recycling, recovery, or disposal of used tires must be at a licensed solid waste management facility. Class III facilities that are licensed exclusively for tires must keep records of the number of tires accepted by the facility. For the purpose of fee determinations the following conversion factor will apply:~~

~~(a) the average tire weighs 20 pounds.~~

~~(6) For the purpose of fee determination, Class III solid waste management facilities are divided into the following categories:~~

~~(a) Major facility disposes of 1000 tons or more of material per year.~~

~~(b) Minor facility disposes of less than 1000 tons of material per year.~~

~~(2) The department may not assess additional fees for composting, household hazardous waste collection, or landfarm operations conducted at a licensed facility that disposes of Group II wastes through landfilling if those operations are:~~

~~(a) conducted on the same site as the landfill; and~~

~~(b) included in the facility's approved plan of operation.~~

~~(7) (3) Fees for the following special categories of Class IV units and facilities are as follows:~~

~~(a) remains the same.~~

~~(b) For a Class III facility that applies to upgrade to Class IV, the application review fee is 50% of the respective fee specified for the appropriate Class III landfill IV facility in Table 3 of ARM 17.50.410.~~

~~(c) The license transfer fee for a Class IV landfill is the same as the fee specified in Table 2 for a Class III landfill.~~

~~(d) The annual license fee for a Class IV landfill is the same as for the respective Class III landfill, as specified in Table 1, except that the disposal fee/ton for a Class II landfill applies to a Class IV landfill.~~

~~(e) The license application fee for a Class IV landfill is the same as specified in Table 3 for the respective Class III landfill.~~

AUTH: 75-10-115, 75-10-204, 75-10-221, MCA

IMP: 75-10-115, 75-10-204, 75-10-221, MCA

REASON: The proposed amendments would eliminate estimates based on population and bring reporting requirements in line with the current laws. Annual reporting requirements for landfarms, composter operations and waste tire facilities would be specified. These reporting requirements are necessary to

differentiate between the various classes of facilities for fee purposes. The definitions of large and small composter operations, and major and minor Class II facilities, are proposed for deletion from this rule and are proposed to be added to the definition rule found at ARM 17.50.403. Proposed new ARM 17.50.410(6) would provide for licensing of small composter operations, so the registration requirement in ARM 17.50.412(3) is proposed for deletion. Composting, household hazardous waste collection, and landfarm operations are often conducted at licensed Class II landfills. These waste reduction activities would be part of the plan of operations reviewed as part of the Class II licensing process and the system should not be double-billed or required to obtain a separate license. Only the composter operations were listed in the current rule as not requiring additional fees, and the proposed amendments would include household hazardous waste collection and landfarm operations as activities that could occur at landfills accepting Group II waste without requiring additional license fees. The tire weight section would be moved to ARM 17.50.411(2)(c) in the proposed amendments. This is necessary to make the rules consistent, because other conversion factors are contained in ARM 17.50.411.

The proposed deletions in ARM 17.50.412(7) are necessary because the proposed amendments to ARM 17.50.410 would add the fees for Class IV facilities to Tables 1, 2, and 3 and the reference to Class III landfills is no longer needed.

17.50.416 CONSOLIDATION OF LICENSES; FEES FOR CONSOLIDATED LICENSES (1) through (3)(b) remain the same.

(4) The department ~~will~~ may not assess the ~~\$0.31~~ per ton disposal fee of Table 1, ARM 17.50.410, for the landfill disposal of incinerator residues ~~in the case~~ where the incinerator facility and the landfill facility are both under a solid waste management system ~~license, or licenses,~~ held by a single person and the per ton fee is assessed for all of the solid wastes received for treatment by the incinerator facility.

AUTH: 75-10-115, 75-10-204, MCA

IMP: 75-10-115, 75-10-204, 75-10-221, MCA

REASON: The proposed amendments to ARM 17.50.416 eliminate fee reference to the amount of the fee that will not be assessed for incinerators at landfills that meet certain conditions under ARM 17.50.410 Table 1, since the amount of the fee is set in that table. The Board is also proposing editorial amendments to make the rules easier to read and to conform the rules to current drafting style. These amendments are not intended to have any substantive effect.

4. Concerned persons may submit their data, views or arguments, either orally or in writing, at the hearing. Written data, views or arguments may also be submitted to the Board of Environmental Review, P.O. Box 200901, Helena, Montana 59620-0901, faxed to (406) 444-4386 or emailed to the Board Secretary

at ber@state.mt.us and must be received no later than 5:00 p.m., September 23, 2003. To be guaranteed consideration, mailed comments must be postmarked on or before that date.

5. Thomas Bowe, attorney for the Board, has been designated to preside over and conduct the hearing.

6. The Board maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list shall make a written request that includes the name and mailing address of the person to receive notices and specifies that the person wishes to receive notices regarding: air quality; hazardous waste/waste oil; asbestos control; water/wastewater treatment plant operator certification; solid waste; junk vehicles; infectious waste; public water supplies; public sewage systems regulation; hard rock (metal) mine reclamation; major facility siting; opencut mine reclamation; strip mine reclamation; subdivisions; renewable energy grants/loans; wastewater treatment or safe drinking water revolving grants and loans; water quality; CECRA; underground/above ground storage tanks; MEPA; or general procedural rules other than MEPA. Such written request may be mailed or delivered to the Board of Environmental Review, 1520 East Sixth Ave., P.O. Box 200901, Helena, Montana 59620-0901, faxed to the office at (406) 444-4386, emailed to the Board Secretary at ber@state.mt.us or may be made by completing a request form at any rules hearing held by the Board.

7. The bill sponsor notice requirements of 2-4-302, MCA, do not apply.

Reviewed by:

BOARD OF ENVIRONMENTAL REVIEW

David Rusoff

DAVID RUSOFF
Rule Reviewer

By: Joseph W. Russell

JOSEPH W. RUSSELL, M.P.H.,
Chairman

Certified to the Secretary of State, August 4, 2003.